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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,741	10/06/2000	IB Mendel-Hartvig	10806-128	1595

7590

06/03/2003

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Cincinnati, OH 45202

EXAMINER

COUNTS, GARY W

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 06/03/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/582,741

Applicant(s)

MENDEL-HARTVIG ET AL.

Examiner

Gary W. Counts

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 April 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-4, 6 and 11-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

Gary W. Counts  
Examiner  
Art Unit: 1641

## DETAILED ACTION

### Attachment to Advisory Action

Continuation of 2 NOTE: Amended claim 1 recite new limitations, i.e. in a lateral flow matrix, require further consideration and further search.

Continuation of 5 NOTE: Applicant argues that Rylatt et al includes a test zone arranged between calibration zones 210 and 211 (Fig. 2) and that the detection zone or test zone is not downstream of the one or more calibration zones, but interspersed therein. Examiner agrees that the test zone is interspersed between two calibration zones. However, the claim recites one or more calibration zones, and one or more detection zones (test zones) downstream of said one or more calibration zones. Rylatt et al clearly disclose a calibration zone (Fig. 2 (210) and a detection zone (204) downstream of the calibration zone. Therefore, Rylatt et al reads on the instantly recited claim.

Applicant also argues that Rylatt does not teach or suggest a device employing Reactant\*, binding to both calibrator and analyte and that the procedure of Rylatt et al employs an analyte detection agent 208 for binding in the test zone and a separate calibration agent 209 for binding in the calibration zone. This is not found persuasive because the claim as recited does not require that the Reactant\* bind to both calibrator and analyte. The claim recites one or more calibrator zones comprising a calibrator, or binder for the calibrator and wherein Reactant\* binds, when Reactant\* is transported through a calibrator zone. Rylatt et al disclose a calibration zone comprising a calibration agent receptor (binder for the calibrator) immobilized in the matrix. Rylatt et

Art Unit: 1641

al disclose that a labeled calibration agent (Reactant\*) is bound in the calibration zone.

The detection zone of the instantly recited claims does not require that Reactant\* bind in the detection zone. Therefore, Rylatt et al reads on the instantly recited claim.

Applicant also argues that the procedure described by Rylatt et al employs a separate support element for diffusibly attaching the analyte detection agent 208 and the calibration agent 209, and Applicants find no teaching or suggestion by Rylatt et al as to where such elements would be provided in the flow matrix 207. This is not found persuasive because of the comprising language recited in the claim. Also the claim recites that a flow matrix in which there is an area of process flow for the transport of Reactant\* and Rylatt et al reads on this limitation.

Applicant's arguments directed toward claim 1 and corresponding dependent claims are directed to the new issues, which will not be entered and considered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W. Counts whose telephone number is (703) 305-1444. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (703) 305-3399. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-4242 for regular communications and (703)308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Application/Control Number: 09/582,741

Page 4

Art Unit: 1641

*Gary Counts*

Gary W. Counts

Examiner

Art Unit 1641

May 8, 2003

*Long*

LONG V. LE

SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 1600

05/28/03